

**AGREEMENT FOR SERVICES
BY AND BETWEEN THE CITY OF SOUTH BEND, INDIANA
AND DOWNTOWN SOUTH BEND, INC.**

THIS AGREEMENT FOR SERVICES (this "Agreement") is effective as of March 18, 2024 (the "Effective Date"), by and between the City of South Bend, Indiana (the "City"), by and through its Venues, Parks & Arts Department, acting through its Board of Park Commissioners ("VPA") and Downtown South Bend, Inc., a not-for-profit domestic corporation organized under the laws of the State of Indiana ("DTSB or the "Contractor"), having its principal place of business at 217 S. Michigan Street, South Bend, Indiana 46601 (each a "Party" and collectively referred to herein as the "Parties").

WITNESSETH:

WHEREAS, Venues, Parks & Arts Department of the City of South Bend exists and operates under the provisions of I.C. 36-4-9-4, as amended from time to time; and

WHEREAS, pursuant to I.C. 36-4-4-2(a); 36-4-5-4; 36-1-3-2; and 36-1-3-3, Venues, Parks & Arts has the power and duty to assist the City Executive in the efficient and effective operation of government of the City; and

WHEREAS, Venues, Parks & Arts has contracted for programs intended to assist the City in community and economic development through efforts promoting and supporting businesses and visitors in Downtown South Bend; and

WHEREAS, DTSB is a not-for-profit domestic corporation created to promote economic and community development through efforts promoting and supporting businesses and visitors in Downtown South Bend; and

WHEREAS, DTSB is willing to assist the City in its efforts by providing the requested services which are more specifically described below and in the attached exhibits and are subject to the terms and conditions of this Agreement; and

NOW, THEREFORE, it is agreed between the parties as follows:

Section 1. Duties of the Contractor. The Contractor shall provide the Services which are set forth in Section 2 below and as outlined in **Exhibit A** ("Requested Services") attached hereto and incorporated herein (the "Services"). The Contractor shall execute its responsibilities in accordance with prevailing professional technical guidelines and standards for services and projects of similar nature and scope.

Section 2. Parties' Responsibilities.

A. Information and Communications.

The City shall provide all reports, and other data requested by the Contractor necessary for the Contractor to accomplish the Requested Services. The City and the Contractor agree that the City shall be permitted to obtain at no additional cost and to retain any and all documents prepared or caused to be prepared by the Contractor in connection with the services to be provided by the Contractor and the Contractor agrees to provide the City with said documents upon request by the City. Said documents may be used by the City or others with respect to the Contractor's undertakings with respect to this Agreement.

B. Reports and Budgets.

The Contractor agrees to provide the City with a report regarding the performance of the Requested Services and the status of the Contractor's work in relation thereto, at least every thirty (30) days following the Effective Date of this Agreement, due by the 5th of each month, and additional reports upon the written request of the Contract Administrator. The report must describe the Contractor's progress in completing the Requested Services.

C. Final Report.

The Contractor shall provide to the City a final report within sixty (60) days of the Termination Date of this Agreement summarizing the successes or failures of this engagement and the Contractor's delivery of the Requested Services in addition to a final accounting of all revenues and expenditures as described above.

D. Records.

The Contractor agrees to keep and maintain, for a period of not less than two (2) years after the termination of this Agreement, at its business office, separate and independent records, reasonably satisfactory to the Internal Auditor and in compliance with Indiana law, consistent with generally accepted accounting principles.

E. Point of Contact.

The City hereby designates the VPA Executive Director or the Director's designee ("Contract Administrator") as the Contractor's point of contact with the City for purposes of this Agreement. The Contract Administrator shall be responsible for the provision of information to the Contractor under this Agreement.

F. Auditing Requirements.

The Contractor agrees to make all information available to the City's Internal Auditor or any other entity as required by Indiana law. The Contractor understands and acknowledges that the City's Internal Auditor may perform, at any reasonable time and for a period extending to two (2) years after the termination of this Agreement, a review of outstanding and completed contracts for compliance with contract provisions and hereby agrees to provide the City's Internal Auditor prompt access to all information and documents (whether electronic or otherwise) requested by the City's Internal Auditor for the purposes of completing such audit, which such access must be provided at least during normal

business hours. Further, the Contractor shall permit the City's Internal Auditor to audit, examine and make excerpts of transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. At regular intervals during the term of this Agreement, the Contract Administrator may conduct reviews of the content and progress of the Requested Services.

G. Form 990.

The Contractor agrees to file its annual Form 990 required under the Internal Revenue Code and its accompanying regulations promptly with the Internal Revenue Service and to submit a copy of said Form 990 (and all amendments thereto) to the City's Internal Auditor within five (5) days of their filing.

H. Revision of Requested Services.

If, as a result of any review hereunder, it is the opinion of the City that revisions to the scope of the Requested Services are necessary or the methods employed by the Contractor are inappropriate, the City may require such revisions to the scope or methods by notifying the Contractor in writing.

I. Additional Auditing Requirements for Not-For-Profit Organizations.

The Contractor understands that not-for-profit entities receiving City of South Bend funds, including funds received from the City, equal to or greater than \$100,000.00 are required to supply an independent audit. Audited financial reports must be provided to the Contract Administrator and the City's Internal Auditor on an annual basis, including any A-133 Audits. If the Contractor is required to submit an E-1 form to the Indiana State Board of Accounts, the Contractor shall also forward a copy of the E-1 to the City's Internal Auditor. The City may also make an examination of the Contractor's fidelity bonding and fiscal and accounting procedures to determine whether these procedures meet the requirements of this Agreement.

J. Competitive Bidding Requirements.

To the extent funds provided to DTSB are used for construction, reconstruction, alteration or renovation of a structure or improvement, Competitive Bidding Requirements shall be followed.

Section 3. Consideration. The base consideration for this one-year (twelve month) Agreement shall not exceed Three Hundred Forty-Nine Thousand Dollars (\$349,000), the funding for which shall be invoiced in eleven monthly installments of Twenty-Nine Thousand Eighty Three Dollars (\$29,083) and one monthly installment of Twenty-Nine Thousand Eighty-Seven Dollars (\$29,087). Moreover, the total Agreement consideration (i.e., base and restricted) shall not to exceed One Million Fifteen Thousand Dollars (\$1,015,000). Invoices shall be sent to the City, along with monthly progress reports as described in Section 2, no later than the 5th of each contract month.

Additional, restricted considerations, are billable on each invoice as services are rendered, not to

exceed the following amounts for services as further outlined in Exhibit A, items:

- A. Item 6 - Two Hundred Forty-Five Thousand Dollars (\$225,000) upon awarding of business enhancement grants.
- B. Item 9(b) - Fifty Thousand Dollars (\$50,000) upon installation of seasonal landscaping.
- C. Item 9(c) - Ninety-Five Thousand Dollars (\$95,000) upon ordering of streetscape items.
- D. Item 9(f) - Two Thousand Six Hundred Sixty-Seven Dollars (\$2,667) for each month an Outreach Ambassador is employed; not exceeding an annual amount of \$32,000.
- E. Item 11 - Two Hundred Sixty-Four Thousand Dollars (\$264,000) for safety patrols.

Restricted considerations may be added to the base monthly invoice in full or incrementally as the corresponding services are fulfilled and must include comprehensive reporting associated with the invoice.

In addition, throughout the term of this Agreement, the City will use its best efforts to maintain and fund a contract with Mydatt Services d/b/a Block by Block for the purposes of fulfilling the Services described in Exhibit A items 9.a through 9.h. Notwithstanding the City's funding of said contract with Mydatt Services d/b/a as Block by Block, Contractor shall be responsible for overseeing and managing that relationship on behalf of the City.

The City reserves the right to challenge any invoice submitted by Contractor. Should the City challenge such invoice, it shall be Contractor's responsibility to provide documentation showing the hours and services listed on the invoice were actually completed. Any payment that the City may deny, withhold or delay shall not be subject to penalty or interest under Indiana Code § 5-17-5.

Section 4. Term. The term of this Agreement shall commence as of the Effective Date and shall continue thereafter for a period of twelve months (the "Agreement Period"), with the option for the Parties to renew the Agreement for additional terms through written affirmation.

Section 5. Termination. This Agreement may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in the best interest of the City. Termination shall be affected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to termination effective date, specifying the extent to which performance of services under which such termination becomes effective. The Contractor shall be compensated for performance prior to the notice date of termination but in no case shall total payment made to Contractor exceed the original Agreement price due on Agreement. No price increase shall be allowed on individual line items if canceled only in part.

Section 6. Funding Cancellation and Payments. In accordance with Indiana Code Section 6-1.1-18, payments are subject to annual appropriation by the City. If the City makes a written determination that funds are not appropriated or are otherwise unavailable to support the continuation of this Agreement, it shall be cancelled. A determination by the City that funds are not appropriated or are otherwise unavailable to support the continuation of performance shall be final and conclusive. The City will not be required to pay any invoices or be otherwise liable for any cost associated with the Contractor's performance of any Services after the effective date of termination; provided, however, that the City shall be required to pay for Services performed prior to the effective date of termination.

Section 7. Governing Law; Compliance with Laws. This Agreement shall be construed and interpreted according to the laws of the State of Indiana. The Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations and ordinances, and all provisions required thereby are hereby incorporated herein by reference. Contractor shall comply with federal, state, and local law in its hiring and employment practices and policies for any activity covered by this Agreement. Further, the City shall not be required to pay for Services that are inconsistent with or in violation of this Agreement nor for any Services performed in violation of federal, state, or local statute, ordinance, rule, or regulation.

Section 8. Relationship/Independent Contractor. Both Parties, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employee(s) or agent(s) of one party shall not be deemed or construed to be the employee(s) or agent(s) of the other party for any purpose whatsoever. Neither party will assume liability for any injury (including death) to any person(s), or damage to any property, arising out of the acts or omissions of the agents, employees, or subcontractors of the other party. The Contractor shall be solely responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

Contractor is solely responsible for compliance with federal, state, and local laws and regulations relating to taxes and social security payments that may be required to be made in connection with the compensation provided under this Agreement. The City, however, may file informational returns with the United States Internal Revenue Service or similar state agency regarding payment made to Contractor in accordance with this Agreement under conditions imposed by federal, state, or local laws applicable to such payment. The City shall provide IRS Form 1099 if applicable.

Section 9. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them.

Section 10. Assignment; Successors. The Contractor shall not assign or subcontract the whole or any part of this Agreement without the prior written consent of the City.

Section 11. Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the fact of this Agreement.

Section 12. E-Verify. The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien. The Contractor shall enroll in and verify the work

eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor shall not knowingly employ or contract with an unauthorized alien.

The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor is not required to participate in the E-Verify program should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The City may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

Section 13. Minority and Women's Enterprise Diversity Development. Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of South Bend through its agencies, boards, or commissions shall not discriminate against any employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, or disability that does not affect that person's ability to perform the work.

In awarding contracts for the purchase of work, labor, services, supplies, equipment, materials, or any combination of the foregoing including, but not limited to, public works contracts awarded under public bidding laws or other contracts in which public bids are not required by law, the City, its agencies, boards, or commissions may consider the Contractor's good faith efforts to obtain participation by those Contractors certified by the State of Indiana as a Minority Business ("MBE") or as a Women's Business Enterprise ("WBE") as a factor in determining the lowest, responsible, responsive bidder.

In no event shall persons or entities seeking the award of a City contract be required to award a subcontract to an MBE/WBE; however, it may not unlawfully discriminate against said WBE/MBE. A finding of a discriminatory practice by the City's MBE/WBE Utilization Board shall prohibit that person or entity from being awarded a City contract for a period of one (1) year from the date of such determination, and such determination may also be grounds for terminating the contract for which the discriminatory practice or noncompliance pertains.

Notwithstanding the foregoing, the award and performance of all City contracts shall comply with applicable federal, state, and local laws.

Section 14. Corporate Authority. The person signing on behalf of the Contractor represents that he/she has been duly authorized to execute this Agreement on behalf of the Contractor and has obtained all necessary and applicable approvals to make this Agreement fully binding upon the Contractor after acceptance by the City.

Section 15. Drug-Free Workplace. The Contractor hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the City within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

Section 16. Indemnity and Insurance. The Parties shall defend, indemnify and hold harmless each other and their respective agents and employees from and against any and all claims, demands, losses, damages, injuries, liabilities, expenses (including reasonable attorney's fees), judgments, liens, encumbrances, orders, or awards arising directly or indirectly from the negligent performance or willful misconduct by either Party and/or its respective employees under this Agreement (all of which are collectively referred to as "Claims") by any person on account of or arising as a result of: (1) injury to, or death of any person including but not limited to either Party's personnel; (2) loss of or damage to any property; (3) the employment of, or performance of the Services by, either Party's personnel and the termination, constructive or otherwise, of such employment or performance of services; or (4) any breach of any federal, state or local laws by either Party or its respective personnel; provided however, that neither Party shall not be obligated to indemnify the other Party for such Party's own negligence or willful misconduct or due to a force majeure event.

In the event the City and the Contractor are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Indiana without, however, waiving any defenses of the Parties under such law.

During the term of this Agreement, the Contractor shall at its own expense procure and maintain in force the below listed insurance through companies licensed to do business in the State of Indiana. The policies shall list the City as an additional named insured relating to any of Contractor's Services under this Agreement. Any insurance maintained by the City shall apply in excess of and not contribute to the insurance provided by Contractor.

- A. Commercial General Liability insurance with a combined single limit for bodily injury, personal injury, and property damage of not less than One Million Dollars per occurrence (\$1,000,000.00); and
- B. Comprehensive Automobile Liability insurance insuring all owned, non-owned and hired motor vehicles used to provide services under this Agreement with a minimum of One Million Dollars (\$1,000,000.00) combined single limit for any one accident and sufficient to satisfy all applicable federal, state, and local laws; and
- C. Employers' Liability insurance with a minimum coverage of Five Million Dollars (\$5,000,000.00) for any one occurrence; and
- D. Umbrella (excess) Liability insurance with a minimum policy limit of at least Four Million

- Dollars (\$4,000,000.00); and
- E. Workers' Compensation insurance sufficient to satisfy all applicable federal, state, and local laws, whether now or hereafter existing.

Section 17. Countersignature. This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement.

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EXHIBIT "A"

REQUESTED SERVICES AND SERVICE AREA MAP

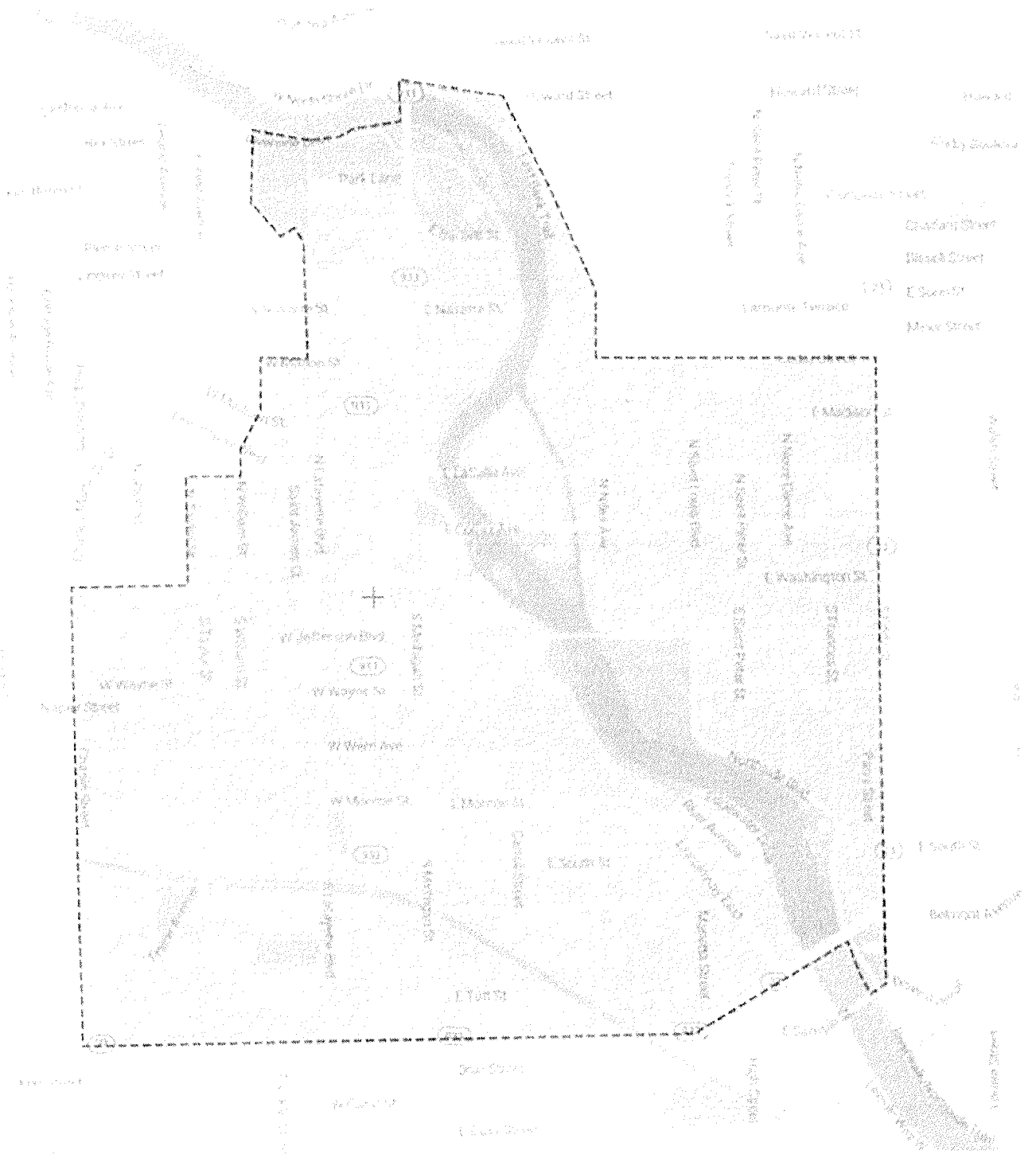
1. Design, develop, and implement programs/events to promote tourism, increase commerce, recruit businesses & residents, and create vibrancy in the Central Development Area of South Bend, which is generally defined as an area with a southern border of Sample Street, Northshore Drive to the north, Eddy Street to the East, and Chapin Street to the West and more specifically represented within the dashed lines of the map included within this Exhibit A (hereby CDA) - regularly coordinating efforts with the City of South Bend's Department of Venues Parks & Arts (VPA);
2. Communicate to the public utilizing a variety of methods (i.e. print, electronic media, signage, etc.) about programs and events within the CDA;
3. Communicate to the public utilizing a variety of methods (i.e. print, electronic media, signage, etc.) the current availability of business and residential property offered for sale and/or lease within the CDA;
4. Actively pursue development of financial resources and encourage private sector partnerships within the CDA;
5. Work with existing property and business owners in the CDA to expand Community Partner Support and pursue additional funding mechanisms for the organization;
6. Implement grant programs to assist business owners with building enhancement projects within the CDA;
7. Maintain an up-to-date CDA business owner and building operator database;
8. Manage the Downtown South Bend Municipal Riverfront Development District Liquor License program, including the local committee process and annual evaluations;
9. Regularly coordinate, communicate, and work directly with VPA and their contractor", Block by Block (BBB), to collectively manage and deliver CDA street level services, including:
 - a. Furnish event support, hospitality, and safety services within the CDA;
 - b. Purchase and maintenance of flowers, bushes, plants, and related beautification items for the CDA; working with VPA on approval of material selection, planting, and care methods;
 - c. Purchase, installation, maintenance, and replacement of streetscape items (flower bowls, benches, trash receptacles, hanging flower baskets, bicycle racks, public art, etc.) to add to and/or replace existing damaged streetscape items in the CDA, with any

purchases being subject to the prior approval of the Contract Administrator;

- d. Manage the banner and flag program including the booking reservations, seasonal purchase, installation, and repair/replacement of worn or damaged flags and banners;
 - e. Purchase, installation and maintenance of holiday and theme decorations, including related items for use in the CDA;
 - f. Engage with partners to maintain a social service and homeless outreach program, designed to connect the local street population to service providers while creating a safe and comfortable environment for residents and visitors within the CDA;
 - g. Perform snow removal in high-traffic areas, specifically in all CDA cross walks;
 - h. Communicate to the City suggestions for improvements to infrastructure within the CDA as well as problems with existing infrastructure;
10. Participate in various City initiated projects or programs as requested by the City;
11. Coordinate and resource safety patrols within the CDA, inclusive of regular reporting and business relations efforts;
12. Other services and items as reasonably requested and related to this agreement.

DTSB CONTRACTED SERVICE AREA MAP

General service areas within district of CDA include areas outlined below and include the Medical District, Central Business District, Renaissance District, and East Bank Village.



IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

DOWNTOWN SOUTH BEND, INC.

BOARD OF PARKS COMMISSIONERS SOUTH BEND, INDIANA

Date: _____

Georgianne Walker

Date: March 18, 2024